



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - :

FINAL

Police Officer Jose Joseph :

ORDER

Tax Registry No. 943113 :

OF

Quartermaster Section :

DISMISSAL
-----X

Police Officer Jose Joseph, Tax Registry No. 943113, having been served with written notice, has been tried on written Charges and Specifications numbered 2019-21373 as set forth on form P.D. 468-121, dated December 10, 2019, and after a review of the entire record, Respondent is found Guilty of the charged misconduct.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Jose Joseph from the Police Service of the City of New York.


KEECHANT L. SEWELL
POLICE COMMISSIONER

EFFECTIVE: 7/20/22

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POLICE DEPARTMENT

May 24, 2022

-----X
In the Matter of the Charges and Specifications :

- against - :

Police Officer Jose Joseph :

Tax Registry No. 943113 :

Quartermaster Section :

Case No.

2019-21373

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Lauren Silverstein, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

COURTESY • PROFESSIONALISM • RESPECT

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2019-21373

1. Said Police Officer Jose Joseph, while off-duty and assigned to Transit District 3, on or about December 1, 2019, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Police Officer Joseph engaged in a physical altercation with a person known to the Department.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Said Police Officer Jose Joseph, while off-duty and assigned to Transit District 3, on or about December 1, 2019, wrongfully failed to remain at the scene or request the response of a patrol supervisor after engaging in an off-duty incident.

P.G. 212-32, Page 1, Paragraphs 1 & 2

OFF DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 1, 2022 and April 7, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Leon Fergus, Police Officer Amanda DiFrancesco and Annette¹ as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in the matter, I find Respondent Guilty of all charged misconduct and recommend that he be DISMISSED from the New York City Police Department.

ANALYSIS

The following is a summary of the facts which are not in dispute. Respondent and Annette met at a club in September 2019; they frequented clubs together and began an intimate

¹ "Annette" is a pseudonym for the Complainant, whose identity is known to the Tribunal.

relationship. These outings occurred at least three times per week over the course of the next three months. On December 1, 2019, at about 0430 hours, Respondent picked Annette up from her grandmother's apartment in Manhattan and they went to Maribella Bar Restaurant, located in the Bronx (T. 112-16). At approximately 0700 hours, Respondent and Annette left Maribella and walked to his car. After they entered his car, they had an altercation, the details of which are in dispute. Respondent eventually drove Annette home, where she called 911 shortly after her arrival. Police officers responded to her home and interviewed Annette; she was then transported to her local precinct where a Domestic Incident Report was prepared. [REDACTED]

[REDACTED]

Annette, who lives with her grandmother and two children, testified that, beginning in September 2019, she began seeing Respondent frequently. On a typical night, Respondent would pick Annette up around midnight and they would go out for drinks (T. 112, 176-77, 181).

Annette testified that on November 30, 2019, she was aware Respondent had gone out with friends, breaking their previous plans to see each other that evening. She felt as though she was being "blown off." When Respondent arrived to pick up her up at approximately 0430 hours on December 1, 2019, she observed that he had slurred speech and smelled of alcohol². Despite her observations, they went to an establishment named Maribella³ and joined some of Respondent's co-workers who were already there (T. 114-17, 181, 183-84).

Annette testified that they left Maribella after about two hours, and walked to Respondent's car. According to Annette, Respondent fell asleep shortly after entering the

² Despite Annette's factual assertions regarding Respondent's purported intoxication, there was no other evidence presented to support an inference that he was intoxicated on the evening in question.

³ Throughout the trial, both parties referred to Maribella as a restaurant, a club and a lounge.

vehicle. She decided to call an Uber, rather than wait for Respondent to wake up. She testified that she had witnessed Respondent fall asleep while driving in the past and called the Uber solely because he was sleeping, not because she believed he was intoxicated (T. 118-19, 218-19).

Annette testified that Respondent woke up as she was ordering the Uber and objected to her seeking an alternate means of transportation home (T. 121-22). She testified, "He slapped my phone out of my hand, and slapped me across the face, and told me I shouldn't have ordered an Uber," which caused her to cry (T. 122). Annette testified further that, "[Respondent] choked me...it was both hands"; while he was choking her, he told her that he was doing so because she ordered an Uber "without his permission" and asserted that he would take her home (T. 123). The Uber eventually arrived and parked across the street; the driver then called Annette's phone. Annette asked Respondent to "let [me] go." Respondent answered her phone, spoke with the Uber driver and cancelled the ride (T. 123-24).

Once Respondent ended the call, he began choking Annette again, this time using a "headlock," which caused her to lose consciousness (T. 124-25). Annette testified that when she regained consciousness, Respondent was sitting behind the steering wheel, with his chest to her back, with his arms crossed in front of her. As she lay across the center console on her torso, Respondent slapped her back and ribs, asking "Are you dead, mother-fucker?" (T. 126-27). Respondent eventually calmed down, released Annette and drove her back to her apartment. During the drive back, Respondent continually asserted that he did not care if he saw her again or if they maintained contact. According to Annette, Respondent told her, "[I'm] a police officer; nothing's going to happen" (T. 127-28).

Security camera footage from the apartment building in evidence shows Annette walking from Respondent's car into the building, then ascending several staircases inside, beginning at

approximately 0757 hours (Dept. Exs 2C-2F). The videos appear to depict Annette wiping tears from her eyes.

Annette entered her apartment building and called her cousin to ask for advice as to whether she should call 911 (T. 129). At approximately 0808 hours, she called 911 to report that she had been assaulted by an off-duty police officer, whom she identified as someone she was seeing (Dept. Ex. 1B; Dept. Ex. 1A at 1:00-1:15). After calling, she took photographs of injuries to her neck, lip, face and ear with her mobile phone. (T. 143-45, 239-42). The photos Annette took appear to depict cuts on her chin and lip, scratches on her face and marks on her neck (Dept. Exs. 3A-3G). Annette testified that as a result of the altercation she had with Respondent, she sustained lacerations on her face and the inside of her lip, as well as some scratches (T. 134). When the police arrived, she recapped the encounter, provided them with these photos and declined to have EMS take her to the hospital (T. 148-49).

Several hours later, at approximately 2355 hours on December 1, 2019, Annette was “still in pain” and went to the Emergency Room at New York Presbyterian Hospital seeking medical attention for continuing pain. She was treated for lacerations, as well as soreness in her neck, hand and head (T. 151-55). The physical examination in the hospital records noted large contusions and marks across Annette’s neck (Dept. Ex. 14).

On cross-examination, Annette acknowledged that she began taking anti-depressants and anti-anxiety medication sometime in 2021 (T. 172). She confirmed that the medications have possible side effects of confusion and memory loss (T. 179). Annette asserted that she was not taking the medications on the date of the incident and explained that she did not take one of the two medications on the day of her testimony before this Tribunal, because she knew it had made her drowsy in the past (T. 191). Annette initially did not recall what, if anything, she drank when

she went out with Respondent but after having her memory refreshed, conceded that it was Hennessey (T. 205). She did, however, deny becoming intoxicated (*Id.*).

Annette testified further that Respondent first choked her with both hands and then later with a headlock, both instances occurring in the Bronx; she clarified that she only lost consciousness after being choked in a headlock (T. 245-46). She denied that Respondent choked her in front of her apartment building (T. 247-48). Annette testified that she did not recall that during an interview on December 1, 2019, she told investigators that Respondent had put her in a headlock in front of her building in Manhattan (T. 249-50). After being confronted with the security video footage of her exiting Respondent's vehicle (Dept. Ex. 2B), Annette testified that she did not recall whether she had given an earlier statement which conflicted with her in-court testimony regarding whether she had been placed in a headlock in the Bronx or Manhattan⁴ (T. 251-52). She attributed her lack of recall to either the passage of time, the various medications she takes, or both (T. 252-53).

Police Officer Amanda DiFrancesco testified that she, her partner Police Officer Tierney, and a patrol supervisor, responded to Annette's apartment at approximately 0820 hours, after receiving a radio transmission for an assault in progress (T. 77, 89). When the three officers arrived at the apartment door, DiFrancesco had already activated her body worn camera (T. 77; Dept. Ex. 6). DiFrancesco entered the apartment and observed Annette's demeanor, describing her as "upset" and "distraught" (T. 90). According to DiFrancesco, Annette told her that she "passed out" during the incident and that her assailant was an NYPD officer, providing her a

⁴ Annette's answer to Counsel for Respondent's question was unclear and not directly responsive to the question posed. There is no dispute that the security camera video is approximately eight seconds long, a time frame which would seem to make it unlikely that Respondent choked Annette to the point where she lost consciousness in front of her building.

photo that showed his shield number (T. 80; Dept. Ex. 6 at 13:17-13:19). DiFrancesco took photographs of the bruises on Annette's neck and the cut on her face (T. 78; Dept. Exs. 5A-5C).

DiFrancesco testified that during the 30 minutes she spent with Annette, she did not observe any indicia of intoxication (T. 100-02). She called for EMS but was unaware if Annette later sought additional medical treatment. Before leaving, she began preparing a DIR (T. 96, 105). The patrol supervisor told Annette that she would have to come to the precinct to give a statement and speak with investigators (Dept. Ex. 6 at 13:37).

On cross-examination, DiFrancesco testified that Annette told her that the incident occurred in the Bronx, and that Respondent choked her in front of her building in Manhattan (T. 106-107). She recalled that Annette told her that she lost consciousness but DiFrancesco could not recall whether Annette said that she lost consciousness in the Bronx or Manhattan (T. 106-08).

Respondent testified that at the time of the incident, he had known Annette for a few months. He denied having an exclusive relationship with her, claiming to have different girlfriends but admitted that she often came to his home. Respondent testified that he was scheduled for a 1500 to 2335 tour of duty on November 30, 2019; he took "lost time" in order to attend a baby shower and had no plan to see Annette that evening, although she sent him a text message earlier that day. After he attended the baby shower, he met up with friends at a bar (T. 298-305).

At approximately 0400 hours on December 1, 2019, Respondent sent a text message to Annette to let her know that he was available to meet up with her. At approximately 0445 hours, he picked Annette up at her apartment building before driving to Maribella. Respondent testified

that they met several of his friends there but neither he nor Annette consumed any alcohol. They eventually left Maribella at approximately 0700 hours (T. 305-11, 320-21).

Respondent testified that he had parked about a block and half away from Maribella. According to Respondent, he had intended to take Annette back to his house, but she was upset and asked him to take her home. He claimed that Annette was unhappy because he was focused on spending time with his friends and other women rather than focusing exclusively on her (T. 312-13).

On cross-examination, he noted it was cold out when they arrived at his car and he wanted to wait for it to heat up. While waiting he closed his eyes and dozed off. Upon waking, Respondent noticed Annette had ordered an Uber. He asserted that there had been a prior issue where Annette used his credit card without his permission to order an Uber from his home. Respondent testified that he did not want to pay for an Uber, since he did not feel Annette needed one if he was there to drive (T. 326, 358, 361). Respondent confronted Annette asking why she ordered the Uber; she asked if he wanted her to cancel the Uber and he responded, "Yes" (T. 326).

Respondent testified that Annette then "got into my 'personal space,'" without specifying how she did so (T. 326, 329, 354-56, 361). He claimed that Annette told him she was unhappy with the status of their relationship; he testified that her declaration came as a "shock," and he told Annette, "I'm not your boyfriend, you're not my girlfriend, so there's no reason for, like, special attachment and things like that" (T. 312-13).

Respondent claimed that he had never seen Annette behave this way before. He described her as a typically calm person. Annette purportedly started badgering him about talking to other women and saying how she thought he cared about her. Respondent claimed

that, in order to move Annette out of his “space,” he moved his arm out in a sweeping motion across her body to push her back into her seat (T. 327-29).

Respondent denied choking Annette at any point on December 1, 2019; he further denied slapping or punching her, testifying, “Look at my size, I would say no, I did not punch her. Of course not” (T. 337). He claimed he felt awkward during the drive back to Annette’s grandmother’s apartment, as neither of them spoke to each other. Respondent testified that when they arrived at the apartment building, he informed her that he was done with the relationship. He testified that he told Annette, “[Y]ou’re acting out of character, get the fuck out of my car and that will be the last time you see me” (T. 312-14).

Respondent testified that he then went home to sleep because he had to report for duty that afternoon. Upon waking, Respondent noticed he received several calls and text messages, including one from his sergeant, which stated “Please turn yourself in. Don’t make it worse on yourself” (T. 317). Respondent initially thought he was “kidding” but ultimately surmised that the message had to relate to Annette, since he “just broke up with this girl”; he then called her to ask what was going on and whether she reported anything (T. 317, 333). According to Respondent, Annette did not answer at first, but subsequently called Respondent back from a different phone number. He testified that he insisted she call back from her cellphone number. When she did so, he asked her “What is going on?” Annette did not answer him, she just hung up the phone (T. 317).

Shortly after his conversation with Annette, Respondent received a call from the duty captain and was directed to report to his resident precinct as soon as possible. [REDACTED]

[REDACTED]

Cases involving disputed allegations of domestic violence often turn on the credibility of the accounts provided by the participants. The respective motivations of the parties to provide truthful information must always be carefully considered. The behaviors of the parties before and after the incident in question, when placed in proper context, may also reveal evidence relevant to a credibility assessment. Finally, the degree to which competing narratives are logical and corroborated by independent evidence, such as photographs and medical records, must be part of the credibility findings.

Based upon the totality of the record, I find Annette's in-court testimony to be worthy of belief. As set forth in greater detail below, the factual assertions she made during the trial were logical and consistent with the other credible evidence in the case. Although Annette admitted taking medication which could affect her memory, the recording of her 911 call, as well as DiFrancesco's body worn camera video, contain statements she made near the time of the incident which are consistent with the material portions of her testimony before this Tribunal. I note that Annette was not on medication at the time of her reports to the police, which were in close temporal proximity to the event. Considering her live testimony, more than two years later, followed the same logical timeline of the facts she asserted to DiFrancesco on the date of the incident, I do not find her medication to have sufficiently affected her memory to render her testimony incredible on the issue of whether Respondent had assaulted her.

Counsel for Respondent established that during two interactions with the police on December 1, 2019, Annette stated that she had been choked in front of her building, as well as near Maribella in the Bronx. While these statements were inconsistent with Annette's in-court testimony, I do not find the discrepancy so significant as to warrant discrediting her testimony in its entirety.

Although establishing venue is not part of the Department's burden of proof, Annette's ability to recall the events of the alleged assault are relevant to a credibility determination. The relevant, credible evidence shows that Respondent choked Annette twice: once with both hands and once with a headlock. The headlock incident resulted in Annette temporarily losing consciousness. While Counsel for Respondent properly attempted to raise doubt regarding Annette's ability to recall where the incidents took place, I am satisfied that any discrepancies in her testimony on that point were not material and did not result from an attempt to mislead the Tribunal.

I further find the testimony of Police Officer DiFrancesco to be credible, forthright, and consistent with the performance of her professional duties. DiFrancesco's body worn camera video, depicting Annette when she gave her statement to police, was consistent with DiFrancesco's recollection of the events from that morning.

In contrast, I find that Respondent's testimony before the Tribunal was permeated with self-interest. While any Respondent is interested in the outcome of the proceeding by virtue of the potential adverse consequences of a guilty finding, in this case, Respondent's self-serving testimony and the selectivity of the evidence he presented in his defense made clear his motivation to advance a false narrative.

Respondent attempted to present Annette as a scorned woman who was so upset that he had no apparent interest in an exclusive relationship with her that she fabricated an allegation of assault against him. His testimony employed the use of long-discredited tropes to undercut the probative value of Annette's testimony. First, he claimed to be "shocked" that she challenged him about his true feelings for her, since he believed that he had made it clear to her that she was not his girlfriend. Second, he described her behavior during the altercation as "out of character"

and aggressive. Third, he attempted to justify his umbrage regarding Annette's decision to call for an Uber by implying, without substantiation or proof, that she had previously charged Uber rides to his credit card without authorization. In the view of the Tribunal, this was more likely an attempt at deflection from the more likely source of his objection, that being a bruised ego. Finally, he reframed the altercation, against the weight of the credible evidence, to claim that any physical force he used was to defend himself against Annette.

Respondent's testimony regarding his parting words to Annette is telling: "[Y]ou're acting out of character, get the fuck out of my car and that will be the last time you see me." This strikes the Tribunal as rather melodramatic, especially considering that Respondent described his relationship with Annette as casual.

Based upon the totality of the circumstances, Respondent's testimony seemed contrived, self-serving and incredible.

Specification 1: Engaging in a Physical Altercation

I find that the Department Advocate has met her burden of proof by a preponderance of the credible, relevant evidence that Respondent engaged in a physical altercation with Annette on December 1, 2019. I further find that Respondent's actions were contrary to the good order, discipline and efficiency of this Department.

Annette testified to being choked and slapped by Respondent. She called for police assistance, displayed her injuries to police officers and sought medical attention, all within hours of the incident. Respondent admitted that when he picked up Annette from her apartment, he did not see any marks on her. By the time police arrived at her home, shortly after Respondent dropped her off, she had several bruises. Those same injuries were documented the same day in photographs Annette took; in photographs DiFrancesco took; and in medical records. The

similarity between the photographs Annette took of her injuries, when compared to the photographs DiFrancesco took of her injuries, further corroborate her testimony. In the aggregate, the evidence is sufficient to support a finding that the assaultive acts Annette reported actually occurred and that Respondent committed them. Respondent's denials are unpersuasive in the face of the corroboration of Annette's testimony and, in particular, the photographs documenting the bruises and scratches to her neck and face.

I further find that Respondent's commission of these acts was to the prejudice of good order, discipline, and efficiency of this Department. Any Member of Service who commits a violent assault on an intimate partner loses the moral standing required to enforce the law against others. Furthermore, the presence of such an individual in this Department is a corrosive to discipline and morale.

Based upon the foregoing, I find Respondent Guilty of Specification 1.

Specification 2: Failure to Remain on Scene/Call for Patrol Supervisor

I find that the Department Advocate has met her burden of proof by a preponderance of the credible, relevant evidence that Respondent failed to remain at the scene of an off-duty incident, or to call a patrol supervisor to the scene, on December 1, 2019.

Patrol Guide procedure 212-32 requires off-duty uniformed members of the service who are at the scene of an unusual police occurrence as a participant or a witness to remain at the scene and request the presence of the Patrol supervisor in the precinct of occurrence. "Unusual police occurrence" includes "family disputes and other incidents of domestic violence in which the officer is either a participant or a witness" (P.G. 212-32).

I have found above, with respect to Specification 1, that Respondent was involved in a physical altercation on December 1, 2019. There is no dispute that Respondent did not remain at the scene of the incident, nor that he called a patrol supervisor.

Accordingly, I find him Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, the Tribunal considered all relevant facts and circumstances, including any aggravating and mitigating factors established in the record. Respondent's employment record was also examined (*See Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240 [1974]). Respondent was appointed to the Department on January 10, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent has a formal disciplinary history. In 2015, Respondent forfeited 45 vacation days and was placed on one-year dismissal probation for making misleading statements during an official Department interview; failing to identify himself as a Member of Service after police responded to a 2011 dispute between two of his neighbors, while he was physically present; and failing to inform the responding officers of what he had observed.

The Department Advocate has recommended that Respondent's employment be terminated. For the reasons set forth below, I concur.

The presumptive penalty for a physical act of domestic violence is 30 suspension days, one year dismissal probation, and a 24-week counseling program; the aggravated penalty is termination.

Engaging in conduct proscribed by New York State law as a felony is grounds for termination under the disciplinary matrix. Penal Law § 121.12, Strangulation in the Second Degree, a class D violent felony, includes criminal obstruction of breathing in which causes the

individual to lose consciousness. Even if the record did not establish the commission of the felony charge by a preponderance of the evidence, I nevertheless find the physical acts by Respondent to be particularly heinous. The credible evidence established Respondent choked a woman to the point of losing consciousness, causing scratches and bruising to her neck and abrasions on her face. Under these circumstances, I find that the aggravated penalty of termination is warranted.

Furthermore, I find that Respondent's prior disciplinary history is an aggravating factor. The commission of a second instance of serious misconduct within four years after forfeiting 45 vacation days and being placed on dismissal probation is indicative of Respondent's inability or unwillingness to successfully rehabilitate.

Respondent violated his oath as a Member of Service by violently assaulting and injuring a woman he was seeing. He demonstrated a lack of impulse control and a capacity for punitive physical aggression during the incident. His testimony before this Tribunal was thick with brazen mendacity. Based upon the foregoing, Respondent's continued presence in this Department is antithetical to its values and mission.

I therefore recommend that Respondent be DISMISSED from his employment with the New York City Police Department.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

JUL 20 2022

KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER JOSE JOSEPH
TAX REGISTRY NO. 943113
DISCIPLINARY CASE NO. 2019-21373

Respondent was appointed to the Department on January 10, 2007. On his three most recent annual performance evaluations, he was twice rated as “Meets Standards” for 2018 and 2019, and was rated “Exceeds Expectations” for 2017.

In 2015, Respondent forfeited 45 vacation days and was placed on dismissal probation after being found guilty of failing to identify himself as an NYPD officer at the scene of a physical dispute, failing to tell responding officers what he observed, failing to request the response of a patrol supervisor and providing misleading statements about the incident at an official Department interview.

In connection with the instant matter, Respondent was suspended without pay from December 1 to December 31, 2019. He was also placed on Level 2 Discipline Monitoring in January 2020; that monitoring remains ongoing.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials